**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**CRIMINAL APPEAL No. 920 of 1995**

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE SHARAD D.DAVE**

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**STATE OF GUJARAT - Appellant(s)**
**Versus**
**RUPCHAND DEVANDAS SINDHI - Opponent(s)**

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**Appearance :**
MR AJ DESAI, APP for Appellant(s) : 1,
MR DF AMIN for Opponent(s) : 1,

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**CORAM : HONOURABLE MR.JUSTICE SHARAD D.DAVE**

**Date : 10/08/2007**

**ORAL JUDGMENT**

1. This appeal is filed by the State under Section 378 of the Criminal Procedure Code against the judgment and order dated 16.3.1995 passed by the learned Judicial Magistrate, First Class, Dahod in Criminal Case No.2851 of 1987 whereby learned trial Judge acquitted the accused for the offence under Sections 2(1a)(6)(c) and 7(1)(v) and Section 16(1) v (i) of the Prevention of Food Adulteration Act.

2. The brief facts of the prosecution case are such that the complainant Pravinchandra Manilal Parikh was performing his duty

as Food Inspector in Dahod Nagarpalika and on 15.7.1987 at about 10 hours in the morning, he checked the grocery shop of the accused. As a part of the same, he purchased 375 grams of groundnut oil and 600 grams of wheat flour and paid the money for the same. Thereafter, he completed necessary procedure of sealing, packing, taking the signatures of the panchas over the slips attached on the bottles, prepared the panchanama and thereafter sent the same for analysis to the Public Analyst. During the analysis, it was found that the sample of groundnut collected was adulterated and after obtaining necessary permission from the Local Health Authority, the complaint is filed against the accused.

3. On the summons being served on the accused, he remained present. The charge against him was framed and on the accused pleading not guilty, the evidence of the complainant's side and further statement of the accused were recorded. Thereafter, after hearing learned advocates for the parties, learned trial Judge came to the conclusion, as stated above, against which the present appeal is filed by the State.

4. Heard learned APP Mr.Desai for the appellant State and learned advocate Mr.D.F.Amin for the respondent accused and perused the judgment of the learned trial Court.

5. Learned APP Mr.Desai has submitted that learned trial

Judge has committed an error in acquitting the accused on the ground that the accused cannot be convicted only on the basis of the evidence of complainant when it is clear from the public analyst report that the food item was adulterated. In support of this submission, he relied on the case of Prem Ballab and another V/s The State, reported in AIR 1977 SC 56. He, therefore, requested this Court to allow this appeal.

6. As against this, learned advocate for the respondent submitted that learned trial Judge has rightly given the benefit of doubt to the accused on the basis that the panch witness has turned hostile, the important witness – helper was not examined and it was not proved that the vessel with which and in which the sample was collected were clean. In support of his submissions, he relied on the decisions in the case of (1) M.B.Risaldar V/s Radheshyam Ramdhar Agarwal & Another, reported in 1980(2) GLR page 137 and (2) Food Inspector, Baroda Muni.Corporation V/s The State of Gujarat, reported in Cr.L.R.(Guj.) 1984 page 137. He, therefore, requested to dismiss the present appeal.

7. Learned trial Judge has discussed that the panch Jitendra Manilal Gandhi who is examined at Exh.87 has stated that he was studying in Standard 10$^{th}$ or 11$^{th}$ at that time and as the complainant called him to the shop of the accused and asked him to sign in the document, he signed therein and except that he does not

know anything. This panch was declared hostile and was cross-examined. He denied in his cross-examination that the samples were collected and sealed in his presence. He was called in the shop at about 3 - 4 hours in the evening. If we look at the panchanama to which this witness is a panch, it is timed at 10.00 hours. Therefore, learned trial Judge has rightly come to the conclusion that this panch cannot be believed as there is contradiction in his deposition.

8. Learned trial Judge has further discussed that the complainant has stated in his cross-examination that he collected the sample of 375 gms., of groundnut oil with the measurement vessel of the accused and that he does not know of what measurement was the same. He also stated that he collected the sample in a steel utensil belonging to Municipality. By discussing the said deposition of the complainant, learned trial Judge has given the finding that the complainant has not stated clearly in his complaint nor in the panchanama that he collected the sample with the measurement vessel of the accused in the steel vessel of the Municipality and the panch who is examined by the prosecution to prove this fact has turned hostile. The prosecution has not examined the helper Asgarbhai Kathriya who was present at the time of doing all this procedure.

9. Therefore, learned trial Judge has come to the

conclusion that the panchanama was not proved by the prosecution, the helper Asgarbhai Kathriya who could have thrown light on the case of the prosecution was not examined, it was not proved whether the measurement vessel with which the samples were collected was clean or not, whether the steel vessel in which the samples were put was clean or not and, therefore, gave benefit of doubt to the accused and acquitted him.

10. Perusing the record of the trial court, I am in complete agreement with the findings recorded by learned trial Judge after appreciating the evidence on record and I am of the considered opinion that there is no need to interfere with the judgment and order of learned trial Judge as no illegality has been committed by learned trial Judge while passing the impugned order.

11. At this stage, a reference deserves to be made to the decision in the case of case of P.C.Trivedi V/s Gajaraben Chandulal & Anr. reported in 2003(3) G.L.R.1876 wherein the sample of cow ghee was found to contain one percent less fact and the incident took place before 17 years and therefore the Court declined to interfere with the acquittal order. Here in the case on hand, the sample was collected on 15.7.1987, the judgment was rendered on 16.3.1995 and the appeal is filed in the year 1995. Today, we are in the year 2007. Therefore, the benefit of the judgment in the case of P.C.Trivedi (Supra) can be given to this case as in this case also

almost 20 years have passed from the date of incident.

12. In view of the above, the appeal deserves to be dismissed and is accordingly dismissed.

(Sharad D.Dave,J)

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